

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ATASCADERO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015041074

ORDER GRANTING PARTIAL
MOTION TO DISMISS AND
LIMITING ISSUES TO TWO YEARS
PRIOR TO FILING

On April 21, 2015, Student filed a due process hearing request (complaint), naming Atascadero Unified School District.

On May 4, 2015, District filed a motion to dismiss those claims in the complaint arising from conduct or events that occurred prior to April 21, 2013. On May 7, 2015, Student filed an opposition.

APPLICABLE LAW

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) by the local educational agency's withholding of information that was required to be provided to the parent.

The Individuals with Disabilities Education Act (20 U.S.C. § 1400, et se.) provides that a school district must give the parent of a child with a disability a notice of procedural safeguards one time per year, and (i) upon initial referral for assessment or parent request for assessment, (ii) upon filing a request for a due process hearing or (iii) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a) (adding that a notice must also be given when an eligible student's placement is changed for violating a code of conduct).) The Education Code also provides that a school district give the parent written notification of its policies and procedures with regard to its policies and procedures for identifying students

with exceptional needs when initiating a referral for assessment. (Ed. Code, § 56301, subd. (d)(2).)

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

Predetermination occurs “when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.” (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344 (*H.B.*); see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (*Vashon Island*) [“A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification.”].) An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a free appropriate public education. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.)

Education Code section 56205 (Section 56205) imposes on Special Education Local Plan Areas (SELPA's) an obligation to ensure that it has in effect policies, procedures and programs that are consistent with state special education law.

DISCUSSION

Student's complaint alleges that she is an 18 year old student with intellectual disability, and that since January 2011, District has isolated her in the back of various classrooms by herself and eventually relegated her to a continuation school. Student's complaint alleges seven claims that District denied her a free appropriate public education due to various procedural and substantive violations of the IDEA: (1) from January 5, 2011 in general; and specifically during the (2) 2010-2011, (3) 2011-2012, (4) 2012-2013, (5) 2013-2014 and (6) 2014-2015 school years. Student also alleges that (7) District failed to assess in all areas of suspected disability during these years. Student alleges that her claims

fall within an exception to the two-year statute of limitations because District misrepresented at the January 5, 1011 individualized education program team meeting the continuum of placement options available to Student. District allegedly presented a “take it or leave it offer” of three District programs without making Parent aware of a local SELPA policy that allowed students from one school district to attend appropriate programs in other school districts within that SELPA.

District moves to dismiss those claims arising more than two years prior to Student’s complaint, including Issues 2 and 3 in their entirety, and those portions of Issues 1, 4 and 7 based on conduct and events occurring prior to April 21, 2013.

Student opposes, arguing that the Section 56205 required District to disclose to Parent the various placement options that might have been available to Student in other school districts within the SELPA during the IEP team meeting discussions of the continuum of placement options available to Student.

Student bases his argument on two separate alleged acts: (1) that District misrepresented the continuum of options and (2) that District failed to make Parent aware of SELPA policy. The alleged statement that District was offering only three programs without considering other appropriate options will support a claim that District predetermined Student’s placement, but does not create an exception to the two-year statute of limitations. The failure to adequately consider a full continuum of options, or to allow parental participation in the development of Student’s IEP, is a procedural violation of the IDEA, but is not a specific misrepresentation by District that it had resolved a problem forming the basis of this complaint. An inadequate FAPE offer is not a misrepresentation. A statement that the District is making a take it or leave it offer of one of District’s programs is not a misrepresentation. Even a statement by District that there were no other appropriate programs available would, at best, raise a triable issue as to the correctness of that statement, but would not create an exception to the statute of limitations as a misrepresentation. To find otherwise would eviscerate the specific two-year statute of limitations imposed in the Education Code and subject to review without time restriction any and all IEP team meetings at which an alleged available option was not considered.

District’s alleged failure to make Parent aware of SELPA policies that might have allowed Student to attend other programs does not constitute the withholding of information that was required to be provided to Parent. Student cites no authority that District was mandated to disclose SELPA policies to Parent. Section 56205 is specific to SELPA’s, and imposes no obligations on school districts.

Under these circumstances, where Student has not alleged any basis for an exception to the statute of limitations, it is appropriate to limit the issues to the period from April 21, 2013 through the date of filing.

ORDER

1. District's partial motion to dismiss is granted. The only issues for hearing are those that occurred between April 21, 2013 and the filing of Student's complaint on April 21, 2015.
2. Student's Issues 2 and 3 are dismissed.
3. Student's Issues 1, 4 and 7 are partially dismissed as to conduct and events occurring prior to April 21, 2013.

IT IS SO ORDERED.

DATE: May 22, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings